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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S)
COMPLIANCE WITH SECTION 271 OF THE)
TELECOMMUNICATIONS ACT OF 1996)

DOCKET NO. T-00000A-97-238

97-0238

**BRIEF ADDRESSING UNBUNDLED LOOPS, LOCAL NUMBER
PORTABILITY, NETWORK INTERFACE DEVICES AND LINE SPLITTING
IMPASSE ISSUES OF WORLDCOM, INC.**

WorldCom, Inc., ("WorldCom") submits this brief addressing impasse issues that relate to Unbundled Loops, Local Number Portability, Network Interface Device and Line Splitting relating the Section 271 Checklist Items 2 and 4 that arose in the fifth series of workshops. WorldCom filed the Direct Testimony of Leilani Jean Hines dated November 2, 2000. This brief focuses on issues raised by WorldCom. However, WorldCom also concurred on issues raised by AT&T throughout these workshops. Therefore, WorldCom concurs in the arguments contained in AT&T's brief addressing impasse issues as well.

UNBUNDLED LOOPS

A. Loop-2: Sections 9.2.2.3.1, 9.2.4.6 and Exhibit C: Whether fiber loops or OCn loops should be provided on individual case basis ("ICB") or as standard products with rates and intervals.

Section 9.2.2.3.1 states Qwest's general obligation to provide unbundled fiber and high capacity loops to CLECs. The language in this section is insufficient and Qwest

includes exclusionary language that binds it to only provide such portions of the loop “where facilities are available and existing on an ICB basis.” High capacity loops are an essential feature to the loop. Without non-discriminatory and consistent access to high capacity loops, CLECs entry into the local market, and their ability to compete with the suite of services Qwest provides to its customers is significantly hindered. The FCC supports the inclusion of high capacity lines in the definition of loop. “High-capacity loops retain the essential characteristic of the loop: they transmit a signal from the central office to the subscriber, or vice versa.”¹

Moreover, denying CLECs access to fiber and high capacity loops because of a lack of facilities ensures CLECs are not able to meet customer needs where Qwest has failed to install adequate facilities. Qwest’s rates for retail services and rates for wholesale services include revenues to allow Qwest to expand its network to account for new growth. The wholesale rates, both for recurring charges and non-recurring charges, established for interconnection services, all unbundled elements, and resold services include sufficient revenues to ensure Qwest is able to construct new network and re-enforce existing network. Finally, while Qwest relies heavily on pricing certain activity on an “ICB”, there is no process contained in the SGAT describing how the ICB process works. Without such an explanation of the ICB process in the SGAT, CLECs are left to Qwest’s determination of cost and consequent pricing with no speedy recourse.

Accordingly, WorldCom proposes that Section 9.2.2.3.1 be changed to read as follows:

Qwest shall provide other unbundled fiber and high capacity loops to CLEC(s). Such loops will be provided on a fiber optic transmission technology capable of supporting any OCn level. Parties will cooperate to determine the specific transmission technology by which the unbundled loop will be provided.

¹ See, FCC Decision No. 99-238, at para. 176.

The SGAT states that Qwest will provide CLECs access to UNEs, including loops, "provided that facilities are available."² In Section 9.2.4.3.1.2.4 of the SGAT, it states that "if appropriate facilities are not available to fill CLEC's order, and a facility build that would satisfy CLEC's order is not scheduled and funded, Qwest will send CLEC a rejection notice and cancel the order." Also, in the section of the SGAT regarding construction, it is clear that Qwest will not build UNEs unless it believes, based on "an individual financial assessment," that it is in *Qwest's* interests to do so.³ It is WorldCom's position that Qwest must build loops, and other UNEs, for CLECs under the same terms and conditions that Qwest would build network elements for itself (or its retail customers) at cost-based rates.

The FCC has stated that:

[t]he duty to provide unbundled network elements on "terms, and conditions that are just, unreasonable, and nondiscriminatory" means, at a minimum, that whatever those terms and conditions are, they must be offered equally to all requesting carriers, and where applicable, they must be equal to the terms and conditions under which the incumbent LEC provisions such elements to itself.⁴

The FCC's rules also require that the ILEC provision network elements to CLECs on terms and conditions no less favorable than the terms and conditions under which the ILEC provides such elements to itself.⁵

Furthermore, the FCC has held that the ILECs have an obligation to replace UNEs that are being provided to CLECs.⁶ An obligation to replace UNEs is essentially the same thing as an obligation to build UNEs. Finally, the FCC's rules also require that the

² SGAT §§ 9.23.1.4, 9.23.1.5, 9.23.1.6 and 9.23.3.7.2.12.8. There are other sections that incorporate the notion that Qwest does not have to build UNEs, for example, SGAT §§ 9.1.2.1 and 9.19.

³ SGAT § 9.19.

⁴ *Local Competition Order*, ¶ 315. In an accompanying footnote, the FCC stated that "[t]he term 'provisioning' includes installation." *Id.*, n. 684.

⁵ 47 C.F.R. § 313(b).

ILEC provision network elements to CLECs on terms and conditions no less favorable than the terms and conditions under which the ILEC provide such elements to itself.⁷

Accordingly, an ILEC must build loops and other network elements for CLECs (except interoffice facilities) under the same terms and conditions that the ILEC would build the facilities for itself, at cost-based rates under section 251(d). Any other holding would be discriminatory and prevent the CLECs from having a meaningful opportunity to compete.⁸ Any other holding would allow Qwest to deny a CLEC's request for a UNE and then build the network element for itself to provide the service to the same customer.⁹ If Qwest refuses to build a network element for a CLEC and subsequently provides the service to the same customer, it can easily be concluded that Qwest discriminated against the CLEC because Qwest built the facility on *some* terms and conditions, terms and conditions that should have been provided to the CLEC.¹⁰

In a recently issued policy statement, Qwest has agreed to build DS0 loops if Qwest has an obligation to build under its provider-of-last-resort obligations.¹¹ This offer is limited to the "first voice grade line per address." Qwest's offer does not go far enough and does not comply with the Act and the FCC's rules.

⁶ *Local Competition Order*, ¶ 268; 47 C.F.R. § 51.309(c).

⁷ 47 C.F.R. § 313(b).

⁸ *Local Competition Order*, ¶ 315. Qwest relies on language in an Eighth Circuit opinion, that an ILECs obligation requires that it provide access only to its "existing network -- not to a yet unbuilt superior one." *Iowa Utils Bd. v. FCC*, 130 F.3d 753, 813 (8th Cir. 1998). Qwest's reliance on this language is misplaced. The Eighth Circuit in this portion of its decision was reviewing the FCC's rules that required ILECs to provide *superior* interconnection and access to network elements. It struck down these rules (47 C.F.R. §§ 51.305(a)(4) and 51.311(c)). Any discussion of these rules and decision to vacate these rules cannot be extended to an ILEC's duties under section 251(c)(3) or other rules not vacated by the Eighth Circuit.

⁹ This is the likely result of Qwest's position. An end-user customer that is advised by a CLEC that facilities are not available is going to try to obtain the facilities from another carrier. If Qwest will not build the facilities for any CLEC, the customer will eventually wind up at Qwest, leaving Qwest to build the facilities on any terms it wishes.

¹⁰ Once again, it should be noted that Qwest is fully compensated under section 252(c) for its costs. Arguably, its profits may not be as high as those it receives under its retail tariffs.

¹¹ See Attachment D and 5 Covad 4.

Accordingly, the language “provided that facilities are available” should be stricken from SGAT sections 9.2.4.3.1.2.4, 9.23.1.4, 9.23.1.5, 9.23.1.6 and 9.23.3.7.2.12.8 and any other conforming changes required to remove any limitation of Qwest obligation to build and that permit Qwest to reject LSRs for no facilities available, rather than allowing such orders to go held. Furthermore, SGAT section 9.19 should be amended. The first sentence of this section should be amended to read: “Qwest will conduct an ~~individual financial~~ assessment of any request which requires construction of network capacity, facilities, or space for access to or use of unbundled loops.” The Commission should also make clear that under section 9.1.2 of the SGAT and related provisions, Qwest is obligated to build UNEs, except dedicated transport, on a nondiscriminatory basis at cost-based rates under section 252(d).

B. Loop-8b: Section 9.2.2.4: Should Qwest be permitted to recover loop conditioning costs for loops under 18,000 feet?

Section 9.2.2.4 describes the process for “conditioning” a loop that could include removal of load coils and excess bridge taps in order to provide a CLEC with a non-loaded loop, and associated charges. Under accepted engineering principles, loops under 18,000 feet should not have bridge taps or load coils. Accordingly, any need for conditioning is based on an inefficiently designed loop by Qwest. WorldCom also raised this issue in connection with line splitting as found in SGAT Sections 9.21.2.1.5 and 9.21.3.2.2. WorldCom also opposes all line conditioning charges if reconditioning is “necessary to assure the quality of the voice service on the UNE-P.”

C. Loop-9: Spectrum Management Issues

Qwest’s spectrum compatibility limitation places restrictions on rolling out loop

technology that is not be consistent with emerging technologies and prevents CLECs from meeting customer needs. The FCC addressed the means by which an ILEC can make such restrictions.¹² Qwest is required to disclose information with respect to rejection of requests for such services based on spectrum compatibility. Qwest also has the burden to demonstrate significant degradation in performance of services based on spectrum compatibility issues. The FCC recognizes the need to resolve such issues in order to allow competitive service offerings to end user customers. Consistent with FCC requirements, WorldCom requests that the SGAT (previously Section 9.2.2.7) be changed to read as follows:

Qwest will provision BRI-ISDN, DS1, or DS3 capable or ADSL capable Loops in areas served by Loop facilities and/or transmission equipment. In the event Qwest believes that the provisioning of such a service is not compatible with the Loop facilities and/or transmission equipment, Qwest will disclose to requesting carrier, in writing, within 10 calendar days of the request to provision such a service, Qwest's basis for believing that provisioning the requested service is not compatible with the Loop facilities and/or transmission facilities. Qwest will bear the full burden of demonstrating incompatibility with the requested order. Claims of spectrum incompatibility must be supported with specific and verifiable supporting information. Qwest will adhere to and incorporate industry standards in regard to spectrum compatibility as they become available.

If Qwest claims a service is significantly degrading the performance of other advanced services or traditional voice band services, then Qwest must notify the affected carrier and allow that carrier a reasonable opportunity to correct the problem. Any claims of network harm must be supported with specific and verifiable supporting information.

WorldCom supports the revised SGAT language proposed by Rhythms regarding Spectrum Management. Rhythms proposed language best reflects competitively neutral spectrum management practices, is consistent with FCC Orders and advances the goals of

¹² See, FCC Decision No. 99-48 at paras. 70 - 91, which address Spectrum Management.

Section 706 of the Act to “encourage the deployment on a reasonable and timely basis of advance telecommunications capability to all Americans.”¹³

LINE SPLITTING

LS-4: Should Qwest be required to provide CLECs access to Qwest’s POTS splitters?

Line splitting involves the provision of voice and data service over a single loop by two different CLECs.¹⁴ In contrast, Line Sharing refers to the situation where the ILEC provides the voice service and a D-LEC provides the data service on the same line.¹⁵ WorldCom’s testimony on Line Sharing was discussed by Thomas T. Friday for the emerging services workshop. My testimony today will address Line Splitting.

Regarding SGAT 9.21.2.1.6, WorldCom believes that Qwest must provide POTS splitters and that the splitter must be located as close to the main distribution frame (“MDF”) as possible. As the Texas PUC concluded earlier this year, ILECs must provide CLECs with POTS splitters as part of the loop UNE. The Texas PUC also ruled that splitters must be located as close to the MDF as possible to avoid extending the total loop length beyond the level acceptable for line sharing and to provide data speeds at parity with data speeds enjoyed by the ILEC or the ILEC’s data affiliate.¹⁶

¹³ 47 U.S.C. § 157.

¹⁴ In the case of line splitting the data service can also be provided by the ILEC or the ILEC’s data affiliate.

¹⁵ Application of SBC Communications, Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, *Memorandum Opinion and Order*, CC Docket No. 00-65, FCC 00-238 (Rel. June 30, 2000), ¶ 324 (“*SWBT Texas 271 Order*”).

¹⁶ Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communication of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, Docket No. 22315, Arbitration Award at 17 (September 13, 2000); affirmed in relevant part Order Approving Revised Arbitration Award at 7-9 (March 22, 2001)(“The Commission affirms the Revised Award and finds it appropriate to conclude that the splitter is to be included in the definition of the local loop”).

At present, UNE-P is the only vehicle most CLECs have to offer voice services to residential and small business customers on a scale that will provide meaningful competition to the ILECs. However, the CLECs' ability to compete in the mass markets will be severely constrained if they are unable to also provision data services in a timely and cost effectively manner. Line Splitting will allow a voice CLEC (V-CLEC) using UNE-P to offer a full suite of features and services to its customers without having to collocate.

In its *Line Sharing Order*, the FCC concluded that the high frequency portion of the loop is a capability of the loop. The FCC has also stated that an ILEC must provide a requesting carrier access to UNEs along with all of the UNE's features, functions and capabilities, "in a manner that allow the requesting telecommunications carrier to provide *any* telecommunications service that can be offered by means of that network element."¹⁷ However, in order to gain access to the high frequency portion of the UNE loop, line splitting is required. Such line splitting is accomplished by adding passive electronic equipment referred to as "splitters," a device that splits the low and high frequency portion of the loop and allows the high frequency portion of the loop to be routed to a DSLAM.

A Qwest furnished line splitter is the only way to allow HFPL access to be delivered in a UNE-P architecture in a manner that is efficient, timely, and minimally disruptive to the retail customer. When UNE-P is provisioned, the service to the customer (whether voice or data) should not require any more work than is necessary. Therefore, for example, if a customer has Qwest or Verizon for voice and a D-CLEC for data, then the customer should be entitled to keep its data provider if the customer

chooses to have its voice service migrate to a V-CLEC who serves via UNE-Platform. Without the option of an ILEC-furnished line splitter, a UNE-P provider would have to purchase or augment collocation space (or collocate in a common area), deploy its own splitter, and go through a provisioning process that is lengthy, cost prohibitive, and unduly disruptive to the customer.

Use of Qwest-owned splitters can eliminate unnecessary service lead times and can allow for more efficient use of resources and scarce central office and frame space, especially in the circumstance of an end user terminating service or migrating the xDSL service or voice service to another provider. CLECs and ISPs should encounter fewer competitive barriers to acquiring or migrating customers when using ILEC deployed splitter, and this is especially true when an end user exercises their choice to switch xDSL or voice providers.

Thus, failure by Qwest to deploy line splitters effectively destroys the utility of UNE-P as a viable means of competing for residential customers who want advanced services. If Qwest is not obligated at the request of a carrier to deploy the line splitters, WorldCom and other CLECs seeking to provide a bundled service of voice and data services to their customers stand to forfeit much of the benefit associated with providing local service on a broad scaled using UNE-P.

In the interest of promoting broad-based competitive entry in the State of Arizona, WorldCom asks this Commission to exercise its authority to require Qwest in this proceeding to provide access to Qwest-owned splitters on a line-at-a-time basis. The FCC has clearly stated that its requirements are the minimum necessary, and that state

¹⁷ 47 C.F.R. §51

commissions are free to establish additional requirements, beyond those established by the FCC, where consistent.¹⁸

Therefore, Qwest should be required to own splitters and make them available to CLECs on a line-at-a-time basis. Qwest should not be permitted to offer only CLEC-owned splitter deployment options. WorldCom agrees with AT&T's regarding the highly preferable use of a Qwest-deployed, line-at-a-time splitter arrangement. This position does not mean that CLECs should not be allowed to deploy their own splitters as they so desire, but it does recognize that other options need to be made available to CLECs desiring to enter the marketplace. Qwest-owned splitters, offered on a line-at-a-time, will also promote the ability of CLECs to offer bundled voice and data service, in direct competition with Qwest.

CONCLUSION

For the foregoing reasons, Qwest cannot be found to be in compliance with the requirements found in Checklist Items 2 and 4 of the Section 271 Checklist until it has modified its SGAT to properly address its legal obligations.

Dated: June 19, 2001

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¹⁸ UNE Remand Order at ¶¶ 154-60.

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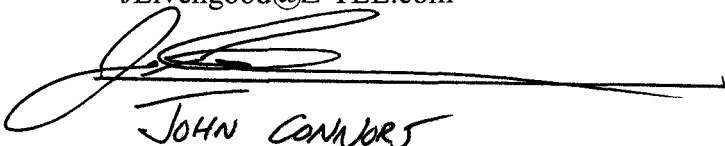
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